

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,)	CRIMINAL CASE NUMBER
Plaintiff,)	CC-02-186-188
)	
vs.)	
)	
JERRY E. WHITLEY,)	
Defendant.)	

MOTION TO EXCLUDE LABORATORY REPORT

Comes now the defendant, by and through his attorney, and moves the Court for an order excluding from evidence at the trial of the captioned cases the report of the Alabama State Crime Laboratory, and respectfully shows the Court as follows:

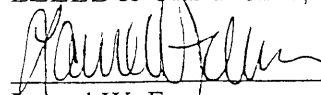
1. The defendant's attorney received the said lab report on June 17, 2002, only two days prior to the docket call.
2. The lab report contains results of the analysis of substances seized during an illegal search of the defendant's home and illegal arrest of the defendant.
3. Said seized substances were the poisonous fruits of the illegal search warrant, search and arrest and should be excluded from evidence.
4. Defendant's attorney has filed a Motion to Suppress Arrest and Evidence and Search Warrant.
5. In the event the Court finds that the lab report and related expert testimony are admissible and not the fruits of an unlawful search, seizure and/or arrest, the Court should exclude said report and testimony pending further analysis in accordance with defendant's Motion to Permit Independent Analysis and defendant's Motion for Further Analysis of Alleged Controlled Substance.

000251

WHEREFORE, defendant prays that the said laboratory report and any related expert testimony be excluded from evidence in the above-stated case.

EZELL & CHANCEY, LLP

By:



Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500

Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,

vs.

JERRY E. WHITLEY,
Defendant.)
)
)
)
)
)
)CRIMINAL CASE NUMBER
CC-02-186-188**MOTION FOR FURTHER ANALYSIS OF
ALLEGED CONTROLLED SUBSTANCE**

Comes now the defendant, by and through his attorney, and moves the Court for an order that the alleged controlled substance seized in the above-styled case be further analyzed, first by the Alabama Department of Forensic Sciences and next by an independent laboratory expert employed by the defendant in order to determine the exact proportion and makeup of the substances found in the containers allegedly containing methamphetamine and other substances.

In support of this motion, defendant relies on *Ex parte Fletcher*, 718 So.2d 1132 (Ala. 1998), in which the Supreme Court stated that where illegal drugs are easily distinguished from and easily separated from legal substances, only the weight of the illegal drugs should be counted. In *Fletcher*, solid pieces of bar soap which were found in a bag with a solid piece of cocaine were not contained in a mixture with cocaine and thus could not be counted toward the 28-gram requirement of a defense of trafficking in cocaine. Therefore, further analysis needs to be done in the instant case to determine the proportion of alleged methamphetamine to other substances and the proportion of water or any other separable liquid in order to get an accurate measurement of the amount necessary to determine how the statute is applied for sentencing if the defendant should be found guilty.

WHEREFORE, the premises considered, the defendant prays that this Court order further analysis of the alleged controlled substances and a report of the weight in grams of each component contained in each of the containers seized.

EZELL & CHANCEY, LLP

By:



Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500


Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 18th day of June, 2002.



Laurel W. Farrar

STATE OF ALABAMA

PLAINTIFF,

VS.

JERRY E. WHITLEY

DEFENDANT.

IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

CASE NO.: CC 02-186-188

ORDER

The defendant having filed a motion for approval of extraordinary expenses and the court having held a hearing and considered evidence presented, it is therefore ORDERED that the motion for approval of extraordinary expenses is denied.

DONE this the 21st day of June, 2002

FILED IN OFFICE
2002 JUN 21 PM 3:23
CIRCUIT DIST. COURT
WASSELL CO. AL.

James R. Davis

JUDGE, CIRCUIT COURT

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186-188

vs.

JERRY E. WHITLEY,
Defendant.FILED IN OFFICE
2002 JUN 21 AM 11:09
CLERK OF DISTRICT COURT
RUSSELL CO., AL**MOTION FOR RECONSIDERATION OF DEFENDANT'S
MOTION FOR APPROVAL OF EXTRAORDINARY
EXPENSES PURSUANT TO *MAY v. STATE***

Comes now the defendant in the above-stated matter, by and through his attorney, Laurel W. Farrar, and requests that the Court reconsider its denial of defendant's motion for approval of extraordinary expenses pursuant to *May v. State* filed herein on June 13, 2002, which requested approval in advance of reimbursement of expenses for an independent expert witness to perform an independent laboratory analysis of the substance alleged in the indictment in this case to be methamphetamine.

Said motion was denied after hearing on June 20, 2002, at which was raised the issue that defendant was out on bond. Defendant would request that another hearing be set and that the Court allow him to show the following:

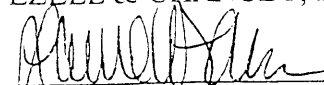
1. Defendant is without funds to make advance payment to an independent laboratory for an analysis of the seized substance which is now located at the Alabama Department of Forensic Sciences.
2. Defendant is indigent and currently unemployed.
3. Defendant's family members actually assisted him in making bond, and they are without the funds necessary to hire an independent laboratory expert.
4. Further analysis is necessary in order to properly defend this case, and it would be a violation of the defendant's constitutional rights if he is unable to afford the assistance of an expert witness which is required for the proper defense of his case.

WHEREFORE, defendant moves this Court to reconsider its ~~denial~~ of defendant's said motion as requested herein.

Respectfully submitted,

EZELL & CHANCEY, LLP

By:



Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500


Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 21st day of June, 2002.



Laurel W. Farrar

STATE OF ALABAMA

PLAINTIFF,

VS.

JERRY E. WHITLEY

DEFENDANT.

IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

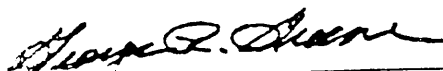
CASE NO.: CC 02-186-188

ORDER

The defendant having filed a motion for reconsideration of defendant's motion for approval of extraordinary expenses and the court having reviewed and considered same, it is ORDERED that the Motion is denied. Defendant has failed to show the needed cost for analysis and also failed to show to court the time needed to complete analysis.

DONE this the 25th day of June 2002.

FILED IN OFFICE
2002 JUN 25 PM 2:04
CIRCUIT/DIST. COURT
RUSSELL CO., AL



JUDGE, CIRCUIT COURT

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,

vs.

JERRY E. WHITLEY,
Defendant.CRIMINAL CASE NUMBER
CC-02-186-188

SUPPLEMENTAL INFORMATION IN SUPPORT OF DEFENDANT'S
MOTION FOR RECONSIDERATION OF DEFENDANT'S
MOTION FOR APPROVAL OF EXTRAORDINARY
EXPENSES PURSUANT TO *MAY v. STATE*

FILED IN OFFICE
2002 JUN 29 AM 9:28

Comes now the defendant in the above-stated matter, by and through his attorney, Laurel W. Farrar, and pursuant to the Court's request, submits the following supplemental information in support of his motion for approval of extraordinary expenses pursuant to *May v. State* filed herein on June 13, 2002, which requested approval in advance of reimbursement of expenses for an independent expert witness to perform an independent laboratory analysis of the substance alleged in the indictment in this case to be methamphetamine.

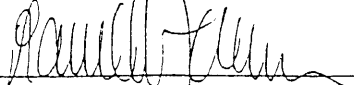
1. Dr. John Hiatt of Quest Laboratories in Las Vegas, Nevada, has consented to perform the requested independent analyses.
2. The two specific samples in question are listed as No. 9 and No. 15 on the Certificate of Analysis dated 9/21/01, result analysis date 6/11/02.
3. Dr. Hiatt has advised that he will need samples for qualitative analyses of the mixture alleged to contain methamphetamine. This would require that the Alabama Department of Forensic Sciences submit one small representative sample each of Nos. 9 and 15 with either (a) the entire substance shaken up and made to be homogenous, or (b) a sample of the powder portion at the bottom plus a sample of the liquid portion on top.
4. The time required for this analysis will be will be two weeks from Dr. Hiatt's receipt of the samples, and the cost will be approximately \$1,000.00, plus shipping fees.

WHEREFORE, defendant moves this Court to issue an order allowing the independent expert analysis as requested by defendant, and that the Court approve payment of the cost thereof.

Respectfully submitted,

EZELL & CHANCEY, LLP

By:


Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500

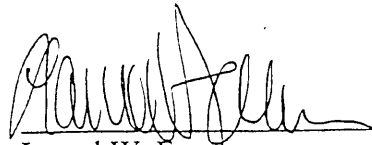
Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing supplemental information upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 29th day of July, 2002.


Laurel W. Farrar

STATE OF ALABAMA

PLAINTIFF,

VS.

Gerry Eugene Whitley

DEFENDANT.

IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

CASE NO.: CC 02-186 (187), 188

ORDER

This matter coming before the Court for call of the criminal trial docket on July 29, 2002. It is therefore,

ORDERED, ADJUDGED AND DECREED:

— Upon failure of the defendant to appear in Court on this date, an alias writ and preliminary forfeiture is ORDERED.

✓ Upon request/motion made in open court this matter is continued to trial docket set for Sept. 16, 2002.

— Plea deadline is extended to _____, 2002 at 10:00 A.M.

— Docket call is set for September 4, 2002 at 10:00 A.M.

✓ Motion to consolidate is ☒ granted ☐ denied.

✓ Hearing on Motion to suppress is set for 8-20-02 at 2:00 PM

— Hearing on Motion to consolidate is set for _____.

— Case is transferred to District Court/Municipal Court for disposition.

— Defendant remanded to custody of Sheriff and shall make a new bond in the amount of _____.

✓ Motion for ext. expenses is granted

FILED IN OFFICE

DONE this the 29th day of July 2002.

Charles R. Davis
JUDGE, CIRCUIT COURT

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186-188

vs.

JERRY E. WHITLEY,
Defendant.OBJECTION TO MOTION TO AMEND ORDER

Comes now the defendant, by and through his attorney of record, and objects to the State's Motion to Amend Order filed herein on August 15, 2002, and as grounds therefor, respectfully shows unto the Court as follows:

1. Defendant's attorney has made telephone calls to determine how the liquid material should be shipped, including telephone calls to the DEA, the Department of Transportation, United Parcel Service and the United States Postal Service.
2. The Department of Transportation advised defendant's attorney that if the mixture containing ether is properly packaged and marked as a hazardous material, it can be shipped by ground or air carriers which allow such materials to be shipped.
3. The United States Postal Service will not ship hazardous materials, but the DEA advised defendant's attorney that their agency has been mailing alleged controlled substances to an independent laboratory in Texas from Montgomery, double-boxing the material, via the United States Postal Service. They also stated that they have used Airborne Express in the past and that Airborne Express is not averse to this.
4. It is the understanding of defendant's attorney that Federal Express, Airborne Express and United Parcel Service do allow the shipment of hazardous materials if the material is properly marked as such, sealed in a container and double-boxed. See Exhibit "A" hereto, a

highlighted portion of the FedEx USA Airbill ("Does this shipment contain dangerous goods?") with options of "No," "Yes," "As per attached shipper's declaration," or "Yes, shipper's declaration not required." The undersigned attorney understands that a shipper's declaration is either required or not by the Department of Transportation, depending on their categorization of those items termed dangerous goods or hazardous materials.

5. It would be unnecessarily prohibitively expensive to have a special courier service to deliver a small sample to Las Vegas, Nevada, as it would be for defendant to post a cash bond of \$50,000.00 to cover any financial penalties that might be incurred by the Alabama Department of Forensic Sciences. It should be the burden of the Alabama Department of Forensic Sciences to properly package and mark the sample so that the shipment will be entirely safe, legal and in compliance with regulations of whatever carrier is selected.

6. To permit an analysis of one sample and not the other would be unfair to the defendant and contrary to the underlying purpose of the independent analysis and would defeat the purpose for which the Court's Order was issued.

WHEREFORE, the premises considered, defendant objects to the State's motion to amend this Court's order.

EZELL & CHANCEY, LLP

By: 

Laurel W. Farrar
Attorneys for Defendant
1200 8th Avenue
P. O. Drawer 2500
Phenix City, AL 36868-2500
(334) 297-2400
Attorney Code FAR-036

FedEx

USA Airbill

FedEx
Tracking
Number

833188549180

1 From Please print and press hard.

Sender's FedEx
Account Number

1343-4481-4

Phone 334-1297-2400

Sender's
Name

Company EZZELL & CHANCEY LLP

Address 1200 8TH AVE

City PHENIX CITY

State AL

ZIP 36867

2 Your Internal Billing Reference

FedEx characters will appear on invoice

3 To
Recipient's
Name

Phone ()

Company

Address

To "HOLD" at FedEx location, print FedEx address.

Address

City

State

ZIP

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

Questions? Visit our Web site at fedex.com
or call 1 800 Go FedEx® 800 463 3339.

4a Express Package Service

☐ FedEx Priority Overnight ☐ FedEx Standard Overnight ☐ FedEx First Overnight

Packages up to 150 lbs.
Delivery commitment may be later in some areas.
Excludes First Overnight
delivery to select locations.

☐ FedEx 2Day ☐ FedEx Express Saver

Second business day
Third business day

4b Express Freight Service

☐ FedEx 1Day Freight* ☐ FedEx 2Day Freight ☐ FedEx 3Day Freight

First business day
Second business day
Third business day

*Call for Confirmation.

5 Packaging

☐ FedEx Envelope* ☐ FedEx Pak* ☐ Other

Includes FedEx Small Pak, FedEx
Large Pak, and FedEx Study Pak.

6 Special Handling

☐ SATURDAY Delivery ☐ 1010 Weekday ☐ 1100 Saturday

Available only to
FedEx Priority Overnight and
FedEx 2Day to select ZIP codes.
FedEx First Overnight
FedEx 3Day to select locations.

Does this shipment contain dangerous goods?

☐ No ☐ Yes ☐ Yes
As per attached
Shipper's Declaration
not required

Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging.

☐ Dry Ice ☐ Dry Ice
Dry Ice 3 (1010) 145

7 Payment Bill to:

☐ Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Actual Invoice Section
Valid for 90 days

FedEx Asst. to
Credit Card

Total Packages

Total Weight

Total Declared Value*

\$.00

*Your liability is limited to \$100 unless you declare a higher value. See back for details.

8 Release Signature Sign to authorize delivery without obtaining signature.

By signing this Airbill you agree to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

Rev. Date 10/01/04 FedEx Form 4199-01/04 GFE 11/01

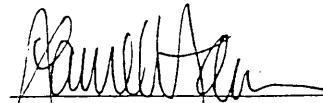
447

0206664473

EXHIBIT
"A"

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 16th day of August, 2002.



Laurel W. Farrar

PLAINTIFF,

RUSSELL COUNTY, ALABAMA

VS.

CASE NO.: CC 02-186-188

Jerry Whitley
DEFENDANT.

ORDER

This matter coming before the Court for call of the criminal trial docket on June 19, 2002. It is therefore,

ORDERED, ADJUDGED AND DECREED:

— Upon failure of the defendant to appear in Court on this date, an alias writ and preliminary forfeiture is **ORDERED**.

— Upon request/motion made in open court this matter is continued to trial docket set for August 5, 2002.

— Plea deadline is extended to July 29, 2002 at 10:00 A.M.

— Docket call is set for July 29, 2002 at 10:00 A.M.

✓ Motion to consolidate is ✓ granted denied.

— Hearing on Motion to suppress is set for .

— Hearing on Motion to consolidate is set for .

— Case is transferred to District Court/Municipal Court for disposition.

— Defendant remanded to custody of Sheriff and shall make a new bond in the amount of .

DONE this the 29th day of July 2002.

Charles R. Owen
JUDGE, CIRCUIT COURT

FILED IN OFFICE
2002 AUG 20 PM 3:23
FILED IN OFFICE
2002 AUG 20 PM 3:23
CLERK OF COURT
RUSSELL COUNTY, ALABAMA

August 23, 2002

Laurel Farrar
Attorney at Law
P.O. Drawer 2500
Phenix City, Al 36868-2500

Re: Jerry Whitley
CC-02-186,187,188

Dear Laurel:

This is in response to your letter dated August 22, 2002 and to confirm our telephone conversation of this date. As I stated in our phone conversation I was willing not to seek the firearm enhancement in the event of a plea of guilty by Whitley. However it seems evident at this time that Whitley desires a trial therefore I will seek the firearm enhancement and have filed the notice thereof this date.

On other matters I talked with Sherwin Boswell this date. I had faxed to him your pleading wherein you stated UPS and Federal Express would ship a sample containing ether. Sherwin told me that they would not ship ether to the ADFS Lab (courier had to be used) but that he would check with them again and if they would accept the shipment he would send it to your expert.

In our phone conversation you stated that Airborne Express might ship it if the other two would not. Since this was not in your motion I asked you to call Sherwin and advise him of that fact.

Sincerely

Buster Landreau
Chief Deputy District Attorney

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

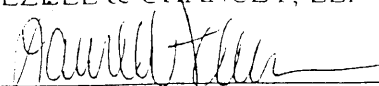
STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186, (187), 188JERRY E. WHITLEY,
Defendant.DEFENDANT'S MOTION IN LIMINE

Comes now defendant JERRY E. WHITLEY, by and through his counsel of record, and moves the Court *in limine* to issue an order directing that the District Attorney not introduce any photographs, pictures or videotape made of this defendant or any co-defendant at or after the time of the arrest in the above-stated cases, and as grounds therefor, would show as follows:

1. Any photographs, pictures or videotape of this defendant or any co-defendant would be immaterial and irrelevant to any elements of the charges now pending.
2. Even if the Court should find that photographs, pictures or videotape of this defendant or any co-defendant is material or relevant, then the prejudicial effect substantially outweighs any probative value of such evidence.

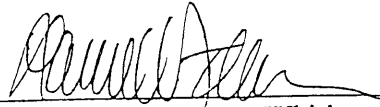
WHEREFORE, defendant respectfully moves the Court to issue an order *in limine* directing that neither the District Attorney nor any State's witness produce to the jury any photographs, pictures or videotape made of this defendant or any co-defendant in the above-stated cases at the time of the arrest or subsequent thereto.

EZELL & CHANCEY, LLP

By: 
Laurel W. Farrar
Attorneys for Defendant Jerry E. Whitley
1200 8th Avenue
P. O. Drawer 2500
Phenix City, AL 36868-2500
(334) 297-2400
Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for defendant Jerry E. Whitley and that I have served a copy of the within and foregoing motion upon the District Attorney of Russell County, Alabama, by placing same in his receptacle located in the Russell County Courthouse in Phenix City, Alabama, this 23rd day of August, 2002.


Attorney for Jerry E. Whitley

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186, (187), 188

vs.

JERRY E. WHITLEY,
Defendant.MOTION TO TRANSPORT

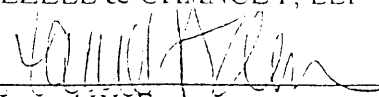
Comes now the defendant in the above-styled cause, by and through his attorney of record, and would request that this Honorable Court order that STEVEN MOSSESON, an inmate of the Lee County Jail, be transported to Phenix City, Alabama, in order to testify in the suppression hearing in the above-styled case scheduled for 2:00 p.m., EDT, on August 26, 2002.

In support of said motion, defendant would show that a subpoena request form was filed, on Friday, August 23, 2002, and a subpoena was produced by the Clerk. The defendant's attorney delivered the subpoena to the Russell County Sheriff's Department, but later learned that the above-named individual was not incarcerated at the Russell County Jail but had been transported to the Lee County Jail to face cases there. The said Steven Mosseson is a witness to the facts, circumstances and/or occurrences leading up to the arrest of the defendant, and it is anticipated that his testimony at the suppression hearing is necessary in order to rebut the evidence presented by the State of Alabama.

WHEREFORE, the premises considered, the defendant requests that the Court to order that a Russell County Deputy Sheriff transport the witness, Steven Mosseson, from the Lee County Jail to the Russell County Courthouse in Phenix City, Alabama, to testify at the suppression hearing on August 26, 2002, at 2:00 p.m., EDT, in Courtroom No. 1.

EZELL & CHANCEY, LLP

By:


Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500

Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing Motion to Transport upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 23rd day of August, 2002.


Laurel W. Farrar

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,

vs.

JERRY E. WHITLEY,
Defendant.

CRIMINAL CASE NUMBER
CC-02-186, 187, 188

ORDER MOTION TO TRANSPORT

Defendant's attorney having submitted defendant's motion to transport Lee County Jail inmate Steven Mosseson to Phenix City, Alabama, to testify at the suppression hearing in the captioned case, it is the opinion of the Court that said motion is due to be granted. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the Russell County Sheriff's Office transport Steven Mosseson from the Lee County Jail to appear in Courtroom No. 1 at 2:00 p.m., EDT, on August 26, 2002.

SO ORDERED, this 23rd day of August, 2002.

Honorable George R. Greene
Judge, Russell County Circuit Court

FILED IN OFFICE
2002 JUN 23 PM 3:30
FEDERAL COURT
JUL 10, 01

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA.)	CRIMINAL CASE NUMBER
Plaintiff.)	CC-02-186-188
)	
vs.)	
)	
JERRY E. WHITLEY.)	
Defendant.)	

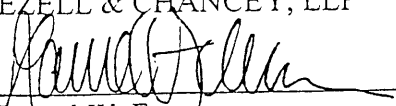
DEFENDANT'S SECOND MOTION TO CONTINUE

Comes now the defendant, by and through his attorney, and moves the Court for an order continuing the trial of the captioned cases, and respectfully shows the Court as follows:

1. This Court has Ordered that samples of the seized substances be sent to an independent laboratory;
2. There has been a problem in that one of the samples has not yet been sent;
3. The attorney for the defendant understands that there is a question as to how the Alabama Department of Forensic Sciences should send the samples;
4. Even if the samples were sent today, there would be inadequate time for analysis together with the time needed for attorney's interpretation and preparation for getting the expert witness to come to Court, if necessary.

WHEREFORE, defendant prays that the trial of the above-stated cases be continued until such time as the matters set forth herein have been accomplished.

FILED IN OFFICE
2005 AUG 28 PM 1:33
JERRY E. WHITLEY
JERRY E. WHITLEY
JERRY E. WHITLEY

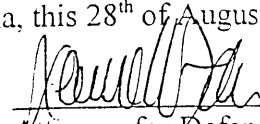
EZELL & CHANCEY, LLP
By: 
Laurel W. Farrar
Attorneys for Defendant
1200 8th Avenue
P. O. Drawer 2500
Phenix City, AL 36868-2500
(334) 297-2400
Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing motion upon:

District Attorney of Russell County, Alabama

by facsimile transmission and by placing same in their respective receptacles located in the Russell County Courthouse in Phenix City, Alabama, this 28th of August, 2002.



Attorney for Defendant

STATE OF ALABAMA

PLAINTIFF,

VS.

JERRY EUGENE WHITLEY

DEFENDANT.

IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

CASE NO.: CC 02-186, 187,
188

ORDER

The parties appearing before the Court for a hearing on the Defendant's motion to suppress and the Court proceeded to take testimony and upon consideration of same, it is ORDERED that the Motion to suppress is denied.

DONE this the 26th day of August 2002.

FIELD OFFICE

DATE REC'D: 28 JUL 68

100-104

JUDGE, CIRCUIT COURT

STATE OF ALABAMA

PLAINTIFF,

VS.

Gerry E. Whitley

DEFENDANT.

IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

CASE NO.: CC 02-186

187

188

ORDER

This matter coming before the Court for call of the criminal trial docket on September 4, 2002. It is therefore,

ORDERED, ADJUDGED AND DECREED:

✓ Upon failure of the defendant to appear in Court on this date, an alias writ and preliminary forfeiture is **ORDERED**.

✓ Upon request/motion made in open court this matter is continued to trial docket set for October 28, 2002.

— Plea deadline is extended to _____, 2002 at ____:00 ____M.

✓ Docket call is set for October 16, 2002 at 10:00 A.M.

— Motion to consolidate is ____ granted ____ denied.

— Hearing on Motion to suppress is set for _____.

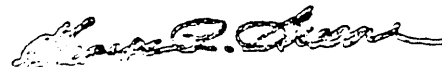
— Hearing on Motion to consolidate is set for _____.

— Case is transferred to District Court/Municipal Court for disposition.

— Defendant remanded to custody of Sheriff and shall make a new bond in the amount of _____.

FILED IN OFFICE
2002 SEP 13 11:00 AM
Set aside bond reduction. Original bond amounts reinstated \$250,000.00, \$20,000.00 & \$1,000.00

DONE this the 4th day of September 2002.



JUDGE, CIRCUIT COURT

THE CITY OF SL0105214

VS WHITLEY JERRY EUGENE

TO ANY LAW ENFORCEMENT OFFICER:

YOU ARE HEREBY COMMANDED TO ARREST: WHITLEY JERRY EUGENE
AND BRING HIM/HER BEFORE THIS COURT TO ANSWER THE STATE FOR THE CHARGE OF
FAILURE TO APPEAR ON THE CHARGE OF: POSS/REC CONTR. SUBS - FELONY
-

WITNESS MY HAND THIS SEPTEMBER 4, 2002.

BOND SET AT: NO BOND

Kathy Coulter / JBS
JUDGE/CLERK/MAGISTRATE

DEFENDANT'S ADDRESS:

150 REYNOLDS ROAD
FORTSON, GA 31808 0000

DEFENDANT'S DESCRIPTION:

HT: 506 WT: 145
HAIR: BRO EYE: BRO
BIRTH DATE: 09/20/1965
RACE: W SEX: M
SID#: 000000000
SSN#: 259177161

ALIAS:

EMPLOYER: _____

PHONE NO: _____

TICKET NUMBER: _____

AGENCY/OFFICER: 0570000/

NOTE:

THIS APPEARS TO BE A VALID ADDRESS

OFFICERS RETURN:

RECEIVED ON 9-4-2EXECUTED ON 9-4-2BY: Russell Co S.O.

- () DEFENDANT ARRESTED, RELEASED ON BOND
(☒) DEFENDANT ARRESTED, IN JAIL
() DEFENDANT ARRESTED, NOT BOOKED
() NOT FOUND
() OTHER _____

Tommy B. Swell
SHERIFFW.P. Allen
OFFICER

OPERATOR: JOS

PREPARED: 09/04/2002

IDENTIFICATION		OFFICER'S NAME		CASE #		SFT	
1 LAST, FIRST, MIDDLE NAME Whitley Jerry Eugene		2 AGENCY NAME RUSSELL COUNTY SHERIFF DEPT		3 CASE #		4 SFT	
5 SEX M		6 RACE W		7 HGT 5'6"		8 WGT 150	
9 EYE BLU		10 HAIR BRN		11 SCARS		12 MARKS	
13 TATTOOS		14 AMPUTATIONS		15 DATE OF BIRTH 09/20/1961		16 AGE 36	
17 PLACE OF BIRTH (CITY, COUNTY, STATE) Columbus Muscogee Co GA		18 BUSINESS ADDRESS (STREET, CITY, STATE, ZIP) 1412 N. V. C. Columbus GA 31904		19 RESIDENCE PHONE 1321-8830		20 OCCUPATION (BE SPECIFIC) N/A	
21 EMPLOYER (NAME OF COMPANY/SCHOOL) N/A		22 BUSINESS ADDRESS (STREET, CITY, STATE, ZIP) N/A		23 BUSINESS PHONE N/A		24 IDENTIFICATION COMMENTS	
25 LOCATION OF ARREST (STREET, CITY, STATE, ZIP) RUSSELL CO DISTRICT CIRCUIT CT		26 ARRESTED FOR YOUR JURISDICTION? YES		27 ARRESTED FOR YOUR JURISDICTION? NO		28 ARRESTED FOR YOUR JURISDICTION? YES	
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165 ARRESTED FOR YOUR JURISDICTION? NO		166 ARRESTED FOR YOUR JURISDICTION? YES		167 ARRESTED FOR YOUR JURISDICTION? NO		168 ARRESTED FOR YOUR JURISDICTION? YES	

TO: HON. TOMMY BOSWELL, SHERIFF

FROM: CLERK'S OFFICE (BY JODY)

DATE: 9/4/02

RE: STATE OF ALABAMA VS. Jerry Whitley

CASE NO.(S): Traff. Mith., Poss Cont. Subst., Resist. Arrest

OFFENSE(S): CC-02 186 187- 188-

Bonds: \$250,000², 20,000- 1,000-

Please be advised that bond in the above-styled case(s) has been
reset at \$ see Above by the authority of Judge Greene.

COURT DATE: Sept. 16, 02 at 9:00AM

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186-188

vs.

JERRY E. WHITLEY,
Defendant.MOTION TO SET ASIDE WRIT OF ARREST AND
WITHDRAW REVOCATION OF BONDFILED IN OFFICE
2002 SEP -4 PM 4:52
CIRCUIT/DIST COURT
RUSSELL CO., ALA.

Comes now the defendant in the above-stated matter, by and through his attorney, Laurel W. Farrar, and requests that the Court reconsider its issuance of writ of arrest in the above styled case, issued on the 4th day of September, and in support, defendant would show the following:

1. Defendant has been out on bond and has kept in touch and kept all appointments with the attorney and the bonding company.
2. Defendant has attended past docket calls and motion hearings.
3. Defendant mistakenly thought docket call was the day of the 4th at 2:00 p.m., rather than 10:00 a.m., and therefore arrived late to docket call. Defendant arrived shortly after 11:00.
4. During the time when Defendant should have been at docket call, Defendant was transporting his mother to a doctor's appointment. Please see attached affidavit of his mother, marked as Exhibit "A."
5. Defendant requests that the court have mercy and allow him to be back out on bond pending the trial in this matter.

6. Defendant requests a hearing on the motion.

WHEREFORE, defendant moves this Court to reconsider its issuance of a writ and to withdraw its revocation of his bond, setting this matter for hearing, as requested herein.

Respectfully submitted,

EZELL & CHANCEY, LLP

By: 

Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500

Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 4th day of September, 2002.

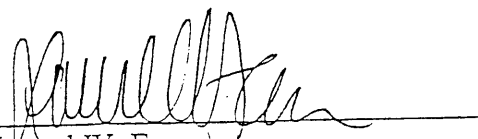

Laurel W. Farrar

Exhibit "A"

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186-188

vs.

JERRY E. WHITLEY,
Defendant.AFFIDAVIT OF MELBA JEAN WHITLEY

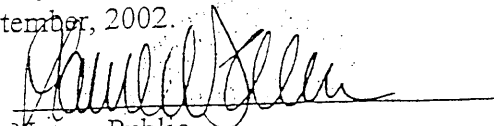
TO: The Honorable George Greene, Circuit Judge

KNOW ALL MEN BY THESE PRESENTS that I, Melba Jean Whitley, of Harris County, Georgia, after having been first placed under oath do hereby state to the Court that I am the mother of Jerry Whitley, the defendant in this case; that on this morning, the morning of September 4, 2002, my son Jerry Whitley, who was at that time out on bond, took me to my doctor appointment. I had asked him to take me to the doctor's office, Family Practice, in Columbus, Georgia, where I saw Dr. Green. Jerry and I must have gotten the times mixed up and thought that the docket call in this case was at 2:00 p.m. I swear or affirm that the foregoing is true and correct.

Dated the 4th day of September, 2002.

 MELBA JEAN WHITLEY
State of Alabama)
Russell County)

I, Laurel W. Farrar, a Notary in and for said County and State, hereby certify that Melba Jean Whitley, whose name is signed to the foregoing affidavit and who is known to me, who being first duly sworn on oath, acknowledged before me on this day, that being informed of the contents of said affidavit executed the same voluntarily on the day the same bears date.

Given under my hand this the 4th day of September, 2002.

 Notary Public
 (My Commission expires: 07/20/03)
 Seal

JEFFREY C. EZELL
RICHARD L. CHANCEY
LAUREL W. FARRAR
R. MICHAEL RAIFORD
**Licensed in Alabama and Georgia*

PHENIX CITY, ALABAMA 36867

Telephone (334) 297-2400

Facsimile (334) 297-3842

Mailing Address:

P.O. Box Drawer 2500

Phenix City, AL 36868-2500

Hon. Buster Landreau
Chief Deputy District Attorney
Russell County Courthouse
Phenix City, Alabama

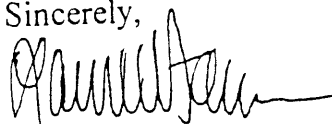
Dear Buster:

Re: State of Alabama vs. Jerry E. Whitley
Russell County Circuit Court Case Nos. CC-02-186, 187, 188

Yesterday I spoke to Sherwin Boswell. I found out that neither of the samples had been shipped to the independent laboratory as yet. I had spoken to him concerning the issues in this case several times before, specifically, his being unwilling to assume the responsibility for shipping any samples of the seized substances as ordered. He stated that there are various rules and regulations which are required by the shippers who do allow shipment of hazardous materials, and he does not have the required materials to comply with these rules, such as having a particular type of cardboard box, etc.

He stated that he thought perhaps if law enforcement were to pick up the two samples, they could be the ones to assume responsibility for shipment to Las Vegas. Would you please work something out where these items can get to the laboratory and to Dr. Hiatt? All I can say is, it is in the order, it can be done, and I have prior approval for shipping costs, so if the state wants to bill the firm, I have no problem with us cutting a check to Airborne Express, or whatever. Thanks.

Sincerely,



Laurel W. Farrar

LWF:lwf

cc: Mr. Jerry E. Whitley



BUSTER LANDREAU
CHIEF DEPUTY DISTRICT ATTORNEY

GREG WALDREP
ASSISTANT DISTRICT ATTORNEY

J. MAXWELL SMITH
ASSISTANT DISTRICT ATTORNEY

JOE EDWARDS
ASSISTANT DISTRICT ATTORNEY

KENNETH E. DAVIS
DISTRICT ATTORNEY
TWENTY-SIXTH JUDICIAL CIRCUIT
RUSSELL COUNTY, ALABAMA

Post Office Box 939
Phenix City, Alabama 36868-0939
(334) 298-6028 / (334) 297-0916
Fax (334) 291-5453

September 5, 2002

Laurel Farrar
Attorney at Law
P.O. Drawer 2500
Phenix City, Al 36868-2500

Re: Jerry Whitley
CC-02-186,187,188

Dear Laurel:

This is in response to your letter of September 5, 2002. It seems apparent that you do not fully understand the position of the State. Sherwin Boswell, who as Director of the Lab should be familiar with this situation, informs me that the samples you are requesting are considered Hazardous Materials by the shipping companies. Therefore they not only require special packing but also require the shipper (in this case the state) to assume financial liability for any damages in the event the package should be damaged or the hazardous materials released.

Since these samples would be shipped to an expert that we are unfamiliar with, and those samples would have to be shipped back, it seems to me it is unreasonable that you and your client would expect the state to undertake this risk I am equally certain law enforcement does not want to undertake this risk.

In several conversations you have, based upon a spouse working for the Post Office, intimated that we are overstating the situation and that it would be a simple thing to do. While I obviously think you are mistaken, I would offer the following:

The state has no objection to you securing the appropriate shipping materials and taking the same to the Auburn Lab where the samples would be packaged by you for shipment by you via whatever medium you chose.

Since it is you and your client that desire an independent analysis by an expert of your choice I would think this would be satisfactory. Please inform me of when you will arrive at the Auburn Lab.

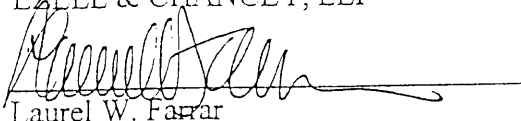
Sincerely

A handwritten signature in dark ink, appearing to read "Buster Landreau", is written over a horizontal line.
Buster Landreau
Chief Deputy District Attorney

and request that the Court consider them to be incorporated herein.

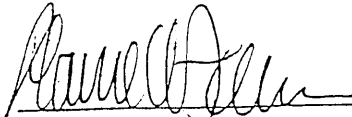
WHEREFORE, defendant moves this Court to reconsider its issuance of a writ and to withdraw its revocation of his bond, setting the bond in the above, lowered amounts as previously ordered, and moves this Court to again consider the original motion as amended, as requested herein.

Respectfully submitted,

By: 
EZELL & CHANCEY, LLP
Laurel W. Farrar
Attorneys for Defendant
1200 8th Avenue
P. O. Drawer 2500
Phenix City, AL 36868-2500
(334) 297-2400
Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing amendment to motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 5th day of September, 2002.


Laurel W. Farrar

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing MOTION FOR WRIT OF *HABEAS CORPUS* upon:

Attorney General of the State of Alabama
11 South Union Street, Third Floor
Montgomery, AL 36130


Honorable George Greene
Judge, Russell County Circuit Court
Russell County Courthouse
Phenix City, AL 36867

Honorable Kenneth Davis
District Attorney, 26th Judicial Circuit
Russell County Courthouse
Phenix City, AL 36867

Honorable Thomas F. Boswell
Sheriff, Russell County, Alabama
P. O. Box 640
Phenix City, AL 36868-0640

Chief Clerk, Circuit Court of Russell County
Russell County Courthouse
Phenix City, AL 36867

this 18th day of September, 2002.


Laurel W. Farrar

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

JERRY E. WHITLEY,
Petitioner,

vs.

STATE OF ALABAMA and THOMAS F.
BOSWELL, Sheriff of Russell County, Alabama,
Respondents.

CASE NO. _____

RUSSELL COUNTY
CIRCUIT COURT

CASE NO. CC-02-186 (187) 188

CLERK OF COURT
JUL 19 2005

CLERK OF COURT

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner petitions this Court to issue a writ of *habeas corpus* requiring Thomas F. Boswell, Sheriff of Russell County, Alabama, to bring petitioner before this Honorable Court to show just cause as to why petitioner's bond should not be reduced, and as cause therefor, states as follows:

1. This petition for a writ of *habeas corpus* is made on behalf of Jerry E. Whitley, by and through his attorney, Laurel W. Farrar.

2. Petitioner is imprisoned and restrained of his liberty in the Russell County Jail in Phenix City, Alabama, by the Sheriff on felony charges, *to-wit*: Possession of methamphetamine, resisting arrest and trafficking in methamphetamine, pursuant to indictments issued on January 16, 2002.

3. Petitioner is restrained of his liberty on said felony charges with bails in the amounts of \$250,000.00 for the charge of Trafficking Methamphetamine, \$20,000.00 for the charge of Possession of a Controlled Substance, and \$1,000.00 for the misdemeanor charge of Resisting Arrest, for a total of \$271,000.00. Said amounts were set by the Honorable George Greene, Russell County Circuit Court Judge.

4. Petitioner filed a Petition for Writ of *Habeas Corpus* on March 13, 2002, and on March 27, 2002, this Court reduced said bond amounts to \$60,000.00 in Case Number CC-02-186, \$10,000.00 in Case Number CC-02-187, and \$1,000.00 in Case Number CC-02-188.

5. After petitioner's bond amounts were so reduced, petitioner's family members assisted him and he was subsequently released on bond. While petitioner was out on bond, he kept in touch with his attorney on an almost daily basis, kept all appointments with his attorney and his bonding company and attended all docket calls and motion hearings.

6. These cases appeared on this Court's docket to be called on September 4, 2002, at 10:00 a.m.. Petitioner mistakenly thought the docket call was to be held at 2:00 p.m., and at 10:00 a.m. was transporting his mother to a doctor's appointment. Petitioner's attorney contacted him immediately, and he arrived in court shortly after 11:00 a.m.. When petitioner arrived, he was arrested, and the Court set aside the bond reduction and reinstated the original bond amounts.

7. On September 4, 2002, the undersigned attorney submitted to the Circuit Court a Motion to Set Aside Writ of Arrest and Withdraw Revocation of Bond, and on September 5 submitted an amendment thereto. Copies of said motions and order are attached hereto.

8. The present bond amount is excessive in violation of the constitutional rights of petitioner as set forth in the Eighth and Fourteenth Amendments to the United States Constitution and in violation of the constitutional rights of petitioner as set forth in Article I, Section XVI of the Alabama Constitution.

9. The present bond amount is contrary to the provisions of Section 15-13-2, Code of Alabama, as amended, which recognizes the allowance of bail as a matter of right prior to conviction.

10. The present bond amount is excessive to such a degree that it effectively denies petitioner the right to bail prior to conviction.

11. The present bond amount greatly and unreasonably exceeds the recommended range of bail as provided under Rule 7.2 of the Alabama Rules of Criminal Procedure.

WHEREFORE, petitioner prays:

- a. That this Honorable Court grant a writ of *habeas corpus*, and after reviewing all of the evidence and argument of counsel;
- b. That this Honorable Court set a bond that is reasonable and not excessive, all within the guidelines dictated by the Constitutions of Alabama and the United States; and
- c. Grant such other and further relief as may be deemed just in the premises.

EZELL & CHANCEY, LLP

By: 

Laurel W. Farrar

Attorneys for Petitioner

P. O. Drawer 2500

Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186, 187, 188

vs.

JERRY E. WHITLEY,
Defendant.

**MOTION TO COMPEL COMPLIANCE WITH THE COURT'S
ORDER FOR TRANSPORT OF SAMPLES FOR INDEPENDENT ANALYSIS**

Comes now the above-named defendant, by and through his attorney of record, and files this motion pursuant to Rule 16.5 of the Alabama Rules of Criminal Procedure, requesting that the Court compel the District Attorney to comply with this Court's Order dated August 9, 2002, that the Alabama Department of Forensic Science send a representative sample of two portions of the seized substances in this case to the named independent laboratory expert, Dr. John Hiatt, for an independent analysis.

In support of this motion, the defendant would show the following, *to-wit*:

1. That on August 9, 2002, this Court issued an order entitled Order for Transport of Samples for Independent Analysis.
2. That a separate order entitled Order Approving Extraordinary Expenses for the cost of the independent laboratory expense was issued on the same date as the Court's Order for Transport.
3. That the State of Alabama, represented by and through the District Attorney, objected to the Court's order in its Motion to Amend Order filed on August 15, 2002.
4. That the defendant, by and through his attorney of record, filed an Objection to Motion to Amend Order on August 16, 2002.

5. That the attorney for the defendant has done preliminary research into what materials can and cannot be shipped by certain ground and/or air couriers, and the District Attorney has stated that the defendant's attorney should be the one to ship the materials to the independent research laboratory, to which defendant objects and which is contrary to this Court's Order.

6. That the attorney for the defendant and the District Attorney have been in communication orally and in writing concerning the fact that one of these samples contains a substance which may cause the State of Alabama to incur a liability if the package should be damaged during shipment.

7. That the parties disagree as to who should bear the liability in the unlikely event the substance cause damage, whether to itself or otherwise.

8. That because of this communication back and forth, and because there is currently an order that the State of Alabama is to send the samples of the seized substance, the attorney for the defendant has come to realize that the State of Alabama has no intention of sending the sample, and therefore, a pleading must be filed in order to compel compliance with the order of this Court.

9. That this case was first continued at least one term due to the laboratory report's not being back from the Alabama Department of Forensic Science.

10. That the case had to be continued from the late August/early September term, presumably because the seized materials had not yet been shipped to the independent laboratory for analysis.

11. That the defendant requests that the Court compel the State of Alabama, by and through the District Attorney of Russell County, to ship the seized materials to the independent research laboratory in Las Vegas, Nevada, as previously ordered.

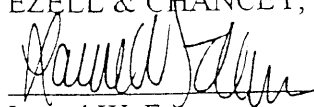
WHEREFORE, the premises considered, the defendant, by and through his attorney, requests the relief prayed for herein:

- a. That the Court compel immediate compliance with the Court's Order that the seized materials in the custody of the State of Alabama, currently located at the Auburn, Alabama location of the Alabama Department of Forensic Science, identified in its report in this case dated June 14, 2002, be appropriately packaged according to the selected courier's requirement;
- b. That immediately, or as soon as is practicable, said items be sent to Dr. John Hiatt, American Medical Laboratories, Quest Diagnostics, 4230 Burnham Avenue, Suite 250, Las Vegas, Nevada 89119, telephone number (702) 733-7866, fax number (702) 733-0318, with advance notification to Dr. Hiatt by the authorized person shipping the materials with confirmation of the shipment and the reference number;
- c. That the Court identify who or what entity shall be liable should there be inadvertent non-compliance with any regulatory requirement concerning shipment of unusual substances, or should any unforeseen injury or accident occur while the properly packaged substance is in transit;
- d. That the Court allow any other remedy relating to the procurement of a fair, independent analysis which it finds appropriate under Rule 16.5 of the Alabama Rules of Criminal Procedure, under the Constitution of the United States and the Constitution and the laws of the State of Alabama, consistent with the requirements of justice and fairness.

Respectfully submitted, this 23rd day of September, 2002,

EZELL & CHANCEY, LLP

By:


Laurel W. Farrar

Attorneys for Defendant

1200 8th Avenue

P. O. Drawer 2500

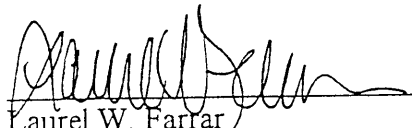
Phenix City, AL 36868-2500

(334) 297-2400

Attorney Code FAR-036

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing Motion upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 23rd day of September, 2002.


Laurel W. Farrar

STATE OF ALABAMA

VS.

JERRY E. WHITLEY

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IN THE CIRCUIT COURT OF

RUSSELL COUNTY, ALABAMA

CASE NO. CC-02-186,187,188

RESPONSE TO MOTION TO COMPEL

Comes now the State of Alabama and in response to the " Motion to Compel" filed herein by Defendant and says as follows:

1 - Heretofore the Defendant has made a Motion under Rule 16.1(c) to be permitted to analyze the controlled substances seized by the State from Defendant and for funds to hire an expert to conduct the analysis.

2 - Rule 16.1(c) requires the State to "permit" the defendant to conduct such an analysis.

3 - The Court granted the Motion and granted funds to hire an expert.

4 - The attorney for Defendant selected an expert in Las Vegas, Nevada. Defense counsel did not make any inquiry as to whether this would cause shipping problems.

5 - After the Order was received by the State (**which was the first time the State was notified of the identity and/or location of the defense expert**) the State informed Defense Counsel that per Sherwin Boswell one of the samples would be considered a hazardous material and the shipper would have to incur financial responsibility for any damage caused by said materials during shipping and further that such liability would be substantial.

6 - The defense counsel, several days later, informed the undersigned that she had checked with several shipping companies and they would ship the hazardous material without financial liability. Sherwin Boswell checked with each company and was informed that special shipping

materials would have to be used and the shipper would still be financially responsible.

7 - The State informed defense counsel of this via letters dated 8-23-2002 and 9-5-2002, copies of which are attached hereto. In the letter of 9-5-2002 the State offered to allow Defense Counsel to secure the necessary packing materials, take the same to the lab and ship the materials with either Counsel or her client being the shipper and therefore incurring the liability of doing so.

8 - The State feels this offer was fair and reasonable particularly in light of the fact that the State is totally unfamiliar with the expert chosen by the Defendant, his qualifications for handling hazardous materials or his facilities for handling such materials.

9 - The State further asserts that its responsibility of Rule 16.1 of the Alabama Rules of Criminal Procedure is to "permit" the defendant's expert to analyze the controlled substance and does not extent to incurring substantial risks to ship the substance.

10 - Defense Counsel responded to the State's Offer by declaring that neither she nor her client were willing to incur the potential liability.

11 - The State finds the position of Defendant and Counsel somewhat puzzling in light of Defense Counsel's repeated assertions that there is little or no risk associated with shipping the sample and particularly puzzling in light of the fact that either the Defendant, Counsel or their expert will have to ship the materials back to the State .

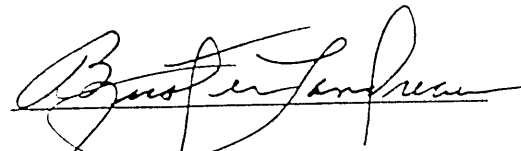
12 - The State has been, and continues to be, willing to allow Defendant or his counsel to ship the materials and incur the risk or in the alternative the State is willing to allow the Defense expert to use its laboratory facilities in Auburn to conduct an analysis.

In conclusion the State submits that it is manifestly unjust to require the Department of Forensic Sciences to incur a potentially substantial liability to ship the samples to a person and place of the defendant's choosing and that it is reasonable to require the defendant to assume such liability

since it is the defendant who is requesting the independent analysis and it is the defendant who has control of the expert and the defendant will have to incur liability in any event to return the items and the defendant is the only one with any control over the return of the items.

The State further submits that it has made every reasonable effort to work with Defense Counsel to resolve this matter and that the failure to resolve the issue has been due to the stubbornness and unreasonableness displayed by defendant.

Done this 26th day of Sept, 2002



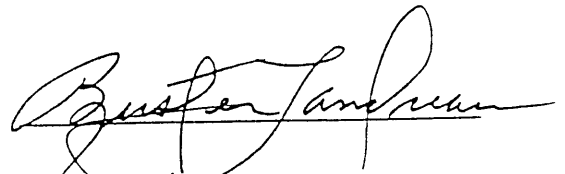
Buster Landreau

Chief Deputy District Attorney

FILED IN OFFICE
SEP 26 2002

Certificate of Service

The undersigned hereby certifies that he has served a copy of this pleading upon Counsel for Defendant on the date set forth above.



Buster Landreau

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,CRIMINAL CASE NUMBER
CC-02-186, 187, 188

vs.

JERRY E. WHITLEY,
Defendant.REPLY TO RESPONSE TO MOTION TO COMPEL

Comes now the defendant, by and through his attorney of record, and makes the following reply to the State's Response to Motion to Compel the District Attorney to comply with this Court's Order dated August 9, 2002.

1. The Order in controversy was issued on defendant's motions filed in June this year. The District Attorney was served with copies of said motions, and hearings were subsequently held thereon at which the State did not mention any anticipated problems that might be encountered in shipping the samples for independent analysis.

2. At the request of the Court, defendant submitted supplemental information, including the identity and location of defendant's expert, on July 29, and a copy was served upon the District Attorney. The statement in Paragraph 5 of the State's response that the first notice of this was the Order of August 9 is simply not true.

3. In Paragraph 2 of the Order in issue this Court ordered that the samples be delivered to the expert by the Alabama Department of Forensic Sciences no later than August 12. Said Paragraph 2 further required that the samples be shipped "after communicating with Dr. Hiatt...to determine the requirements for samples and packaging. No objection was made to this Order until August 15 when the District Attorney filed a Motion to Amend Order.

4. The Order in issue was not directed to the defendant or the defendant's attorney. Therefore, it is the defendant's position that it is incumbent upon the State to comply with the Court's directives and that the responsibility therefor does not lie with the defendant, with or without the State's magnanimous concession of allowing defendant's counsel to do all work and assume all responsibility and liability in connection therewith as mentioned in Paragraph 7 of its response.

5. At the conclusion of the analysis, the samples will certainly be shipped back to the State by Dr. Hiatt, but defense counsel finds the State's position in Paragraph 11 of its response that this is somehow associated with the task of shipping the samples to Dr. Hiatt is somewhat puzzling.

6. The State avers, **in bold type**, that it has made every reasonable effort to work with Defense Counsel to resolve this matter, but defendant has displayed stubbornness and unreasonableness. Defendant respectfully submits that this is not a matter to be resolved between the parties, but rather is a direct Order of this Court which the State has spent a great deal of time and effort to sidestep.

WHEREFORE, the premises considered, the defendant, by and through his attorney, again requests that the Court compel the State to immediately comply with this Court's Order of August 9, 2002.

Respectfully submitted, this 1st day of October, 2002,

EZELL & CHANCEY, LLP

By: _____

Laurel W. Farrar

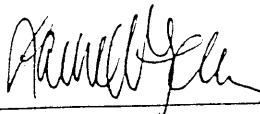
Attorneys for Defendant

P. O. Drawer 2500

Phenix City, AL 36868-2500

CERTIFICATE OF SERVICE

I hereby certify that I am attorney for the defendant and that I have served a copy of the within and foregoing Reply upon the District Attorney of Russell County, Alabama, by placing a copy thereof in a receptacle held in his name in the Office of the Clerk of this Court, this 1st day of October, 2002.



Laurel W. Farrar